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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/847,388 | 05/03/2001 | Isabelle Afriat | 205731US0 | 6489 |

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EXAMINER

HAGHIGHATIAN, MINA

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1616

DATE MAILED: 03/27/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/847,388

Applicant(s)

AFRIAT, ISABELLE

Examiner

Mina Haghighatian

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 7, 14 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 contains the term "amanfadine" which is indefinite. Claim 14 is vague because it contains "the composition is a physiologically acceptable medium". Both of these appear to be due to typing errors. Claims 7 and 27 contain the trademark "TEFLON®". Use of trademarks in claims is not permitted.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over (JP 07196440) in view of Castro et al (6,306,407).

JP '440 teaches skin cosmetics comprising short fibers which are excellent in water resistance and oil resistance, and provide good conditions of stability and application to the skin. Such cosmetics give a **smooth touch** to the skin with no greasiness. These short fibers, in the length of 0.1 to 5 mm can be synthetic or natural fibers such as cotton, sheep wool, silk, rayon, acrylic type, a polyamide type etc. Since the polyamide type is excellent in usability, it is the most preferable type (page 5/22, items 0003 and 0004).

JP '440 also discloses that the short fibers are in the range of 0.1 to 20 deniers, and most preferred are 0.1 to 1.2 deniers. The amount of short fibers is 0.1 to 10 wt% and more preferably 0.5 to 5 wt% (page 6/22, items 0005 and 0007).

JP '440 teaches that the composition may contain other ingredients such as oil, moisturizer, antioxidant, a chelating agent, a pigment, an antiseptic, etc. Also the examples show that the composition may be in the form of an emulsion, foundation or cream. The methods of preparation for such compositions are also included (pages 6/22 through 14/22). JP '440 lacks specific teachings on the active agents.

Castro et al teach a cosmetic or pharmaceutical composition for topical application to the skin which comprises a fibrous component for promoting the transfer

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of moisture and oil and removal of unpleasant and unwanted moisture from skin, especially the facial skin. The fibrous component can include wicking fibers, evaporating fibers, or a combination of both. The fibrous component contains wicking fibers to facilitate the transfer of moisture and oil from the surface of the skin to the composition. The composition, when applied to the skin provides a layer of fibers having moisture and oil regulating properties. The compositions maintain the natural and fresh appearance of the skin even during exercise and other hot and humid environmental conditions (col. 2, lines 37-64).

Castro teaches that the fibers can be selected from the group consisting of polyethylene, rayon, cotton, wool, silk and blends thereof. The nylon fibers have a denier from about 0.8 to about 20.0 (col. 3, lines 25-52). The fibrous component is present in an amount of from about 0.005 to about 1.0 percent by weight, and preferably from about 0.01 to about 0.5 percent by weight. The shape of the fibers can be any assortment of shapes such as round, bean, bone, oval, irregular, etc. But most preferred shape is round. The fibers have a length from about 0.01 to 0.25 inches. The composition also includes a compatible carrier (col. 4, lines 1-30).

Castro discloses a method of wicking moisture and oil and evaporating moisture off of the skin comprising applying to the skin the cosmetic or pharmaceutical composition which comprises fibrous component. The benefit of adding fibers to cosmetic or pharmaceutical compositions can be obtained in any type of makeup composition, for example, foundations, eyeshadows, blushes, powders, lipsticks, etc. also disclosed is the benefit of non-make up compositions such as treatment products,

wherein the product is applied to the skin for a therapeutic purpose, but also has the added advantage of controlling oil and moisture on the skin (col. 5, lines 13-33).

Castro discloses additional preferred components of the cosmetic compositions including one or more pigments, fillers, metal stearates, oil-soluble antioxidants, chelating agents, sunscreens such as zinc oxide, oil-soluble actives such as tocopherol and its derivatives, retinol and its derivatives, and the like (col. 5, line 51 through col. 6, line 38).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified the composition of JP '440 by adding the active agents as taught by Castro et al with the reasonable expectations of obtaining a composition which provides the user a complimentary benefit and is non-sticky and easy to use.

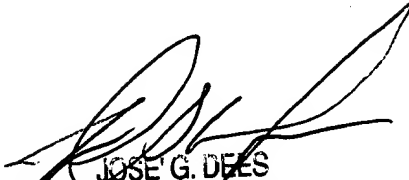
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mina Haghighatian whose telephone number is 703-308-6330. The examiner can normally be reached on core office hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 703-308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0198.

Mina Haghighatian
March 21, 2002


JOSE G. DEES
SUPERVISORY PATENT EXAMINER
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